



LOUISIANA DEPARTMENT OF INSURANCE
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Directive 199

July 11, 2006

**MANDATORY REQUIREMENT TO EXTEND PRESCRIPTIVE PERIOD FOR
LOUISIANA INSUREDS TO FILE SUIT OR LEGAL ACTION FOR
RECOVERY OF DAMAGES CAUSED BY
HURRICANE KATRINA AND/OR HURRICANE RITA**

**TO: ALL AUTHORIZED PROPERTY AND CASUALTY INSURERS AND
APPROVED UNAUTHORIZED PROPERTY AND CASUALTY
INSURERS (SURPLUS LINES INSURERS)**

**RE: NOTICE OF MANDATORY REQUIREMENT TO EXTEND
PRESCRIPTION PERIOD FOR LOUISIANA INSUREDS TO FILE SUIT
OR LEGAL ACTION FOR RECOVERY OF DAMAGES CAUSED BY
HURRICANE KATRINA OR HURRICANE RITA**

STATUTE AND REGULATION REFERENCES: LSA-R.S. 22:2; LSA-R.S.
22: 5; LSA-R.S. 22:658.3; LSA-R.S. 22:691; LSA-C.C. Art. 3467; LSA-C.C. Art.
3493; LSA-C.C. Art. 3499; LSA-C.C.P. Art. 927; Act 2006 No. 739; and Act 2006
No. 802

Most property and casualty policies insuring property in Louisiana contain language that may limit the right of the insured to file suit or take legal action for the recovery of a damage claim under the policy to a period of 12 months (1 year) next after the inception of the loss. See generally LSA-R.S.22:691.

Contracts of insurance are generally considered to be personal as between the insured and the insurer and as such, except for LSA-R.S. 22:691, would be subject to a 10 year prescriptive period. This policy language is contrary to the general prescriptive period of 10 years applicable to personal actions as set forth in LSA-C.C. Art. 3499. Additionally, LSA-C.C. Art. 3493 states that prescription for a cause of action related to damages to property only commences to run after the owner acquires, or should have acquired, knowledge of the extent of the damage to the property.

In the context of LSA-C.C. Art. 3493, many Louisiana insureds who sustained property damage caused by Hurricane Katrina and/or Hurricane Rita may not know the exact date when the loss to their insured property actually occurred due to the fact that most Louisiana insureds were evacuated, in some cases for several months. Also, many Louisiana insureds who sustained damage caused by Hurricane Katrina and/or Hurricane Rita have still not been able to initiate or finalize repairs to the damaged property due to the shortage of contractors to handle the unprecedented number of claims generated by Hurricane Katrina and Hurricane Rita. As such, many insureds do not now know, and do not presently have the ability to obtain the knowledge, of the extent of the damage caused to their insured property by Hurricane Katrina and/or Hurricane Rita.

Also, provisions of the Louisiana Code of Civil Procedure establish that prescription is a personal defense that can only be raised by a party and cannot be interposed by the court (LSA-C.C.P. Art. 927). As such, an insurer is free to ignore the benefit of any prescriptive period that may be applicable to said insurer. This provision is in keeping with the long standing civilian tradition that recognizes that there is always a moral obligation to pay a debt and that prescription is purely a legal device used to allow a party to not pay an otherwise valid indebtedness, in this case pay the claim of an insured who incurred damages as a result of Hurricane Katrina and/or Hurricane Rita.

During the recent 2006 Regular Session, the Louisiana Legislature passed, and Governor Kathleen Babineaux Blanco signed into law, Act 739 and Act 802. These two new legislative enactments emphatically proclaim that the right of an insured to file a claim against the insurer shall be extended (Act 739) and that the right to file suit or legal action against the insurer shall be extended (Act 802). Under Act 739 the new date for an insured to file a claim for damages is September 1, 2007 for Hurricane Katrina and October 1, 2007 for Hurricane Rita. Under Act 802 the new prescriptive period for an insured to file suit or take legal action is August 30, 2007 for Hurricane Katrina and September 25, 2007 for Hurricane Rita. The Louisiana Legislature has spoken very clearly that insureds who incurred property damage caused by Hurricane Katrina and/or Hurricane Rita have been vested with extended time to either file a claim, or file suit or take legal action against the insurer. Act 739 deals with the filing of a claim whereas Act 802 deals with the prescriptive period for filing suit or taking legal action. Although the dates set forth in Act 739 and Act 802 are different, Directive 199 only addresses the extension of the prescriptive period for an insured to file suit or take legal action against the insurer for property damage caused by Hurricane Katrina and/or Hurricane Rita.

Lastly, I have the plenary authority under LSA-R.S. 22:2 to regulate the insurance industry "...in all its phases." Pursuant to this plenary authority I note that there have been an unprecedented number of claims generated by these two hurricanes that place the insurance industry at risk for incurring massive

costs, not only from the payment of claims but from the potential for litigation with the insured over a property damage claim caused by Hurricane Katrina and/or Hurricane Rita. The number of claims from both hurricanes is estimated to exceed 1 million and the estimate for the amount of payments to be made for these hurricane claims is estimated to be \$24 billion of private insurer losses.

In this regard, Emergency Rule 22 was promulgated to establish the mandatory Hurricane Mediation Program whereby insureds could demand mediation with their insurer for any property damage claim caused by Hurricane Katrina and/or Hurricane Rita. The Hurricane Mediation Program has been operational for approximately 6 months and has already resulted in over 6,200 requests for mediation. Approximately 80% of the cases that have been the subject of mediation have resulted in a resolution of the claim dispute between the insured and the insurer. As such, insureds and insurers have both benefited from the Hurricane Mediation Program. Insureds have received the additional monetary compensation they believed they were entitled under the policy without incurring the expenses of litigation. Based on average litigation defense costs, insurers may have already saved \$50 to \$100 million in litigation expenses that would otherwise have been spent to defend these actions had they been filed in court.

However, with the prospect of a 12 month (1 year) prescriptive period approaching for Hurricane Katrina on or about August 29, 2006 and for Hurricane Rita on or about September 24, 2006, the advantages of the Hurricane Mediation Program are jeopardized for both insureds and insurers. Due to the overwhelming number of claims caused by these extraordinary events it will be impossible to resolve all such claims, whether through mediation or the traditional claims adjustment process, prior to the impending 12 month (1 year) prescriptive period for Hurricane Katrina and/or Hurricane Rita.

Based on conservative estimates, insurers have already saved \$50 to \$100 million, and additional savings to insurers could exceed \$100 to \$200 million. Additionally, with over 6,200 requests for mediation, the Hurricane Mediation Program is having a positive effect on the ability of insureds and insurers to resolve their disputed claims. I have determined that this potential litigation savings to insurers cannot be ignored when considered in light of my duty to ensure that insurers remain solvent and able to pay claims to Louisiana insureds, as well as the potential impact these litigation cost savings could have on insureds. Accordingly, for the reasons stated above, I hereby find that the strict adherence to a 12 month (1 year) prescriptive period that may be implied by LSA R.S. 22:691 is impractical and will hinder the legitimate efforts of insurers and insureds to work toward an amicable settlement of all aspects of the claims adjustment and resolution process with regard to property claims caused by Hurricane Katrina and/or Hurricane Rita.

Under the applicable Louisiana law set forth above, and in furtherance of my plenary authority, I clearly have the authority to direct authorized insurers and surplus lines insurers in the manner and mode in which they operate in Louisiana as it pertains to requiring them to extend the 12 month (1 year) prescriptive period to Louisiana insureds who have claims for damage caused by Hurricane Katrina and/or Hurricane Rita. Therefore, an insurer can be required to bring its practice in line with changes in the law and in compliance with Directive 199 such that Louisiana insureds shall have until August 30, 2007 to file suit or legal action with regard to a claim for damages under a property insurance policy for damages caused by Hurricane Katrina, and Louisiana insureds shall have until September 25, 2007 to file suit or legal action with regard to a claim for damages under a property insurance policy for damages caused by Hurricane Rita.

Accordingly, I hereby issue Directive 199:

1. On or before August 1, 2006, all authorized property and casualty insurers and all surplus lines property and casualty insurers doing business in Louisiana in 2006 shall execute and file with the Department the following Stipulation. This Stipulation shall be reprinted on letterhead stationery of the insurer, shall be signed by the President, Vice President, General Counsel or other similar person duly authorized and empowered, and shall state, without alteration, the following, to wit:

STIPULATION

From: Name of insurance company

To: Any insured under a property and casualty policy insuring property in Louisiana who has a claim for damages caused by Hurricane Katrina and/or Hurricane Rita

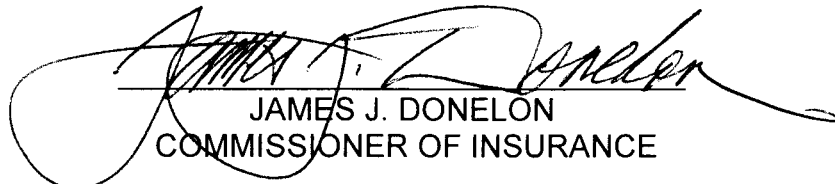
Re: Extension of time period to file suit or legal action to recover damages caused by Hurricane Katrina and/or Hurricane Rita

Date: August 1, 2006

Pursuant to Directive 199, issued by Commissioner of Insurance James J. Donelon, any insured under a property and casualty policy insuring property in Louisiana shall have until August 30, 2007 to file suit or legal action with regard to any claim for property damages caused by Hurricane Katrina, and shall have until September 25, 2007 to file suit or legal action with regard to any claim for property damages caused by Hurricane Rita.

2. All Stipulations should be directed to Mrs. Kathlee Hennigan, Director Compliance, (1702 N. Third Street), P.O. Box 94214, Baton Rouge, LA the insurer will be placed on the Department's Web site so that insureds will have access to the fact that the insurer has extended the prescriptive period for Hurricane Katrina to August 30, 2007 and for Hurricane Rita to September 25, 2007.
3. The new prescriptive period for suit or legal action on a Hurricane Katrina property damage claim shall be established as August 30, 2007.
4. The new prescriptive period for suit or legal action on a Hurricane Rita property damage claim shall be established as September 25, 2007.
5. Any authorized insurer who fails or refuses to comply with Directive 199 shall be subject to any and all enforcement authority vested in the Commissioner under the Louisiana Insurance Code.
6. Any surplus lines insurer who fails or refuses to comply with Directive 199 shall be subject to any and all enforcement authority vested in the Commissioner under the Louisiana Insurance Code.
7. Authorized insurers or surplus lines insurers that did not write a property and casualty insurance policy that was in effect when Hurricane Katrina and/or Hurricane Rita caused damage in Louisiana, or as of July 11, 2006 have had no claim filed against it for damage caused by Hurricane Katrina and/or Hurricane Rita, shall not be required to file a Stipulation as required by Directive 199.
8. Any questions regarding this Directive 199 should be directed to either Warren E. Byrd, Esq., Executive Counsel for the Department of Insurance, at <wbyrd@ldi.state.la.us> or by telephone at (225) 342-7276, or Walter Corey, Esq., Attorney for the Department of Insurance, at <wcorey@ldi.state.la.us> or by telephone at (225) 342-4673, or Kathlee Hennigan, Director of Forms and Compliance for the Department of Insurance, at <khennigan@ldi.state.la.us> or by telephone at (225) 342-1258.
9. You are hereby directed to immediately bring your practice into compliance with the unequivocal purpose and intent of Directive 199. Please be governed accordingly.

Baton Rouge, Louisiana this 11th day of July 2006.



JAMES J. DONELON
COMMISSIONER OF INSURANCE